

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEROY WILLIAMS,

Plaintiff,

V.

DR. GALLAGHER,

Defendant.

CASE NO. C09-5805BHS

ORDER DECLINING TO
ADOPT REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 21). The Court has considered the report and recommendation and the remaining record and hereby declines to adopt the report and recommendation (Dkt. 21) and re-refers this action to the magistrate judge for consideration of Defendant Dr. Gallagher’s (“Gallagher”) motion for summary judgment for the reasons stated herein.

On January 28, 2010, Plaintiff Leroy Williams filed a complaint against Gallagher based on alleged civil rights violations under 42 U.S.C. § 1983. Dkt. 5. On August 31, 2010, Gallagher filed a motion for summary judgment. Dkt. 19. On November 5, 2010, the magistrate judge issued a report and recommendation stating that the action should be dismissed with prejudice as mail sent to Williams by the clerk's office on April 19, 2010, and April 30, 2010, was returned as undeliverable. Dkt. 21 at 2 (citing Local Rule CR 41(b)(2)). On November 19, 2010, Gallagher filed objections to the report and

1 recommendation with an attached email from Shari R. Hall (“Hall”), the legal liaison for the
2 facility at which Williams is incarcerated, stating that Williams had in fact been served with
3 the motion for summary judgment and refused to accept the documents. *See* Dkt. 24; *see also* Dkt. 26 (declaration of Hall attesting to the statements made in her email attached to
5 Gallagher’s objections). Gallagher objects to the report and recommendation to the extent
6 that it recommends dismissal without prejudice. Dkt. 23 at 2.

7 The Court concludes that Williams has been given the opportunity to receive and
8 respond to Gallagher’s motion for summary judgment. Accordingly, the Court declines to
9 adopt the report and recommendation and re-refers this action to the magistrate judge for
10 consideration of Gallagher’s motion for summary judgment.

11 Therefore, the Court hereby **ORDERS** as follows:

12 (1) The Court declines to adopt the Report and Recommendation (Dkt. 21);
13 (2) This action is re-referred to the magistrate judge for consideration of
14 Gallagher’s motion for summary judgment (Dkt. 19).

16 DATED this 5th day of January, 2010.

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BENJAMIN H. SETTLE
United States District Judge